

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

Southwestern Public Service Company

Docket No. ER06-274-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 31, 2006)

1. On December 1, 2005, Southwestern Public Service Company (Southwestern) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ changes in rates and rate design for service to several wholesale customers,² to become effective February 1, 2006. In this order, we conditionally accept the proposed rates for filing and suspend the rates for the maximum five-month period, to become effective July 1, 2006, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. Southwestern proposes a change in its rates and rate design for its full and partial requirements wholesale customers. According to Southwestern, its proposed rate changes will yield increases for six customers and a rate decrease for one customer.³ Southwestern states that it is submitting the filing primarily to update the test year from

¹ 16 U.S.C. § 824d (2000).

² The affected customers are: Farmer's Electric Cooperative, Inc. (Farmer's Electric); Lea County Electric Cooperative, Inc. (Lea County); Central Valley Electric Cooperative, Inc. (Central Valley); and Roosevelt County Electric Cooperative, Inc. (Roosevelt County) (collectively, Cooperative Customers); Cap Rock Energy Corporation (Cap Rock); Golden Spread Electric Cooperative, Inc. (Golden Spread); and Public Service Company of New Mexico (PSC New Mexico).

³ According to Southwestern, the effect of the proposed changes includes rate increases for Golden Spread (2.78 percent), Cap Rock (0.64 percent), Farmer's Electric (0.11 percent), Lea County (0.02 percent), PSC New Mexico (0.48 percent), and a rate decrease for Central Valley (0.93 percent). Transmittal Letter at 2.

that on which the rates to the affected customers are currently based. Southwestern explains that the current rates are subject to a pending proceeding, and that the rates resulting from that proceeding will reflect an historical test year of 2004.⁴ Southwestern proposes to update its rates based on the 2004 test year to reflect, according to Southwestern, significant changes on its system that occurred in 2005 and are expected to occur in 2006. Southwestern explains that, starting in 2006, it will no longer serve a major firm service customer, and certain contracts also will have expired. Southwestern indicates that it is reflecting these changes in its Period II cost-of-service analysis supporting its instant proposal. In addition to updating the test year, Southwestern proposes to unbundle the sale of interruptible power to PSC New Mexico. Southwestern also proposes to increase its return on equity (ROE) allowance from 10.5 percent to 11.2 percent. Southwestern contends that this increase is necessary to account for changing market conditions. Other changes Southwestern proposes include (1) changing from a 3 Coincident Peak (CP) to a 12 CP cost allocation method, (2) moving certain costs from its FAC into its base rates, (3) adjusting its FAC base rate from zero to \$0.038894 per kilowatt hour (kWH), and (4) instituting wire transfer as the method for payment under its individual contracts with the affected customers.

3. Southwestern seeks an effective date of February 1, 2006, requesting that the rate decrease (for Central Valley) go into effect immediately and requesting a nominal suspension period for the proposed rate increases. Southwestern argues that its proposed Period II rate increases are not substantially excessive and should not warrant a full suspension period under the Commission's suspension policy.

Notice of Filing and Responsive Pleadings

4. Notice of Southwestern's filing was published in the *Federal Register*, 70 Fed. Reg. 74,797 (2005), with comments, protests, and interventions due on or before December 22, 2005. Timely motions to intervene were filed by Cap Rock and Occidental Permian, Ltd. (Occidental). PSC New Mexico filed a timely motion to intervene and protest. Golden Spread and the Cooperative Customers filed timely motions to intervene, protests, and motions for summary disposition or rejection. On January 6, 2006, Southwestern filed an answer to the motions and protests.

⁴ Southwestern's current rates are subject to the outcome of a complaint proceeding, Docket No. EL05-19-000, which has been consolidated with a rate case filed by Southwestern to modify its Fuel Adjustment Clause (FAC) in Docket No. ER05-168-000. Hearing procedures are currently ongoing in the consolidated proceedings.

5. The Cooperative Customers, Golden Spread, and PSC New Mexico assert in their protests that the proposed rates are unjust and unreasonable, request a maximum five-month suspension of the rates, and request that the rates be set for hearing. The Cooperative Customers and Golden Spread argue that Southwestern's proposed ROE of 11.2 percent is excessive and unsupported based on the Commission's discounted cash flow (or DCF) methodology.

6. Golden Spread and the Cooperative Customers request summary rejection of Southwestern's inclusion of Construction Work In Progress (CWIP) amounts in rate base. They contend that not only has Southwestern not identified the type or nature of the alleged pollution control facilities for which it seeks CWIP rate base treatment, but Southwestern also has failed to meet the requirements of the Commission's regulations for the inclusion in rate base of such amounts, which total \$28.7 million.

7. Golden Spread and PSC New Mexico believe that Southwestern's proposals to increase its base FAC rate from \$0 to \$0.038894 per kWh and to move costs from the FAC to base rates warrant further examination to determine their reasonableness.

8. The Cooperative Customers support Southwestern's use of the 12 CP demand allocation method but request summary rejection of Southwestern's proposal to continue use of a 65 percent demand ratchet. The Cooperative Customers argue that Southwestern failed to provide justification for the continuation of the demand ratchet in its filing. Golden Spread, however, asserts that the change from a 3 CP to a 12 CP allocation is unjust and unreasonable, and would create a cost shift from full requirements customers to Golden Spread, the only partial requirements customer.

9. The Cooperative Customers also contend that the customer charge is in error because the manner in which it was derived is inconsistent with the billing determinants to which it is applied in the proposed rate schedules. The Cooperative Customers explain that, in deriving the proposed monthly customer charge of \$5,701 for full requirements customers, Southwestern divided the total of the billing and customer service costs allocated to the full requirements customers, plus the annual revenue requirement for Southwestern's investment in meters, by 60 (*i.e.*, 5 full requirements customers multiplied by 12 months). However, the Cooperative Customers note that the proposed language in the rate schedules applicable to each of the Cooperative Customers states that the customer charge of \$5,701 is charged "per delivery point per month," which they state could result in gross over-collection, to the extent that customers are served at more than one delivery point.

10. Lastly, the Cooperative Customers protest the use of a two-year amortization period for recovery of rate case expenses and propose a five-year amortization period, at minimum.

11. Golden Spread requests summary disposition regarding certain revenue credits that it claims Southwestern has failed to include in the total to be credited to customers. Golden Spread states that Southwestern's Period II analysis, at Statement BK, references a revenue credit for "Retail Interruptible Demand Program-Energy Revenue," totaling \$7.1 million, yet the "total" figure shown for that credit is only \$1,602,706.⁵ Golden Spread states correcting this discrepancy alone would decrease the annual cost of service to Golden Spread by over \$800,000.

12. Golden Spread also questions other inputs and assumptions underlying Southwestern's proposed rates, arguing, among other things, that: (1) revenue credits for off-system sales have been understated; (2) Southwestern's cost of service fails to provide a credit for ancillary services that are self supplied by Golden Spread; (3) Southwestern's filing uses inappropriate methods for determining plant and accumulated depreciation balances; (4) Southwestern's cash working capital allowance is inconsistent with a lead-lag study conducted by Golden Spread; (5) projected costs for metering expenses are possibly excessive; (6) the claimed income tax allowance is based on excessive estimates; and (7) depreciation rates are unsupported. Based on these and other potential problems with Southwestern's proposed rate increase, Golden Spread estimates that the rate increase proposed for it is over 128 percent excessive.

13. In its answer, Southwestern first argues that Occidental should not be permitted to intervene because Occidental has no direct interest in the proceeding. Southwestern argues that as a retail customer of Southwestern, Occidental is not directly impacted by Southwestern's proposed changes in wholesale rates. Regarding Occidental's interests as a retail customer of Southwestern's wholesale customers who are affected by the proposed rate changes, Southwestern argues that the wholesale customers can adequately represent Occidental's interest in this proceeding. Southwestern is concerned that if Occidental is granted party status in this proceeding it could act in an obstructionist manner merely to place a burden on Southwestern.⁶

14. Southwestern argues against the summary rejection of its inclusion of CWIP in rate base. Southwestern contends that its December 1, 2005 filing includes adequate information in support of its inclusion of CWIP in rate base for pollution control plant as allowed in the Commission's regulations concerning CWIP.⁷ Furthermore, Southwestern

⁵ Golden Spread Protest at 6.

⁶ Southwestern Answer at 4-5.

⁷ Southwestern Answer at 6 (citing the December 1, 2005 filing at Statement AG & vol. V, 451-78 (describing amounts for CWIP included in rate base and work papers relating to the CWIP projects)).

submits Attachment A to its answer containing additional support that describes how the CWIP projects are required by various state and federal agencies, statutes, and permits. Southwestern also contests the Cooperative Customers' request for summary rejection of Southwestern's 65 percent demand ratchet, arguing that the use of a 12 CP demand allocation does not preclude a utility from also applying a demand ratchet. Southwestern contends that the issue of the 12 CP demand allocation and the 65 percent demand ratchet are best addressed at hearing or in settlement, rather than by summary disposition.

15. With respect to the application of the \$5,701 customer charge on Rate Schedule No. 118, Southwestern acknowledges a clerical error in its December 1, 2005 filing. Southwestern notes that the \$5,701 should be applied per customer per month, and not per delivery point per month as stated on the rate schedules for Central Valley, Farmer's Electric, Lea County, and Roosevelt County. Southwestern also acknowledges a program error which lead to a small number of mistakes in the filing, including failing to reflect the appropriate revenue credit for "Retail Interruptible Demand Program – Energy Revenue" as noted by Golden Spread in its protest.

Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Notwithstanding Southwestern's opposition to Occidental's intervention, we will grant Occidental's intervention. We are satisfied that Occidental has expressed an interest in the outcome of this proceeding that no other party represents and that its participation is in the public interest.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Southwestern's answer because it has provided information that assisted us in our decision-making process.

Substantive Matters

18. Southwestern's proposed rate increase and change in rate design raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. Our preliminary analysis indicates that Southwestern's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Company*,⁸ the Commission explained that where the preliminary examination indicates that the proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas*, the Commission would generally impose a five-month suspension. In this proceeding, our preliminary examination indicates that the proposed rate increase may be substantially excessive. Accordingly, we will conditionally accept Southwestern's proposed rates for filing, suspend the rates for five months, make them effective July 1, 2006, subject to refund, and set them for hearing and settlement judge procedures. However, with respect to the mistakes in the December 1, 2005 filing that Southwestern acknowledges in its answer, we will direct Southwestern to file revised rates within thirty days of the issuance of this order to correct the clerical and program errors related to the \$5,701 per month customer charge and the "Retail Interruptible Demand Program – Energy Revenue" revenue credit.⁹

20. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle the dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed under Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

⁸ 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁹ Southwestern should correct its rate schedules for Farmer's, Lea County, Central Valley and Roosevelt County Electric Cooperatives to reflect that the \$5,701 customer charge is applied per customer per month, rather than per delivery point as stated in the current rate schedules. Southwestern also should correct its failure to include the appropriate amount for revenue credits under "Retail Interruptible Demand Program – Energy Revenue," as well as other errors that it acknowledges in its answer.

¹⁰ 18 C.F.R. § 385.603 (2005).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Southwestern's proposed rates are hereby conditionally accepted for filing and suspended for five months, to become effective July 1, 2006, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Southwestern's rate of return. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of

establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Southwestern is hereby directed to submit a compliance filing within thirty (30) days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.